



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/842,511	04/26/2001	Richard Llewellyn Powell	INE 005 CIP	7335
26568	7590	11/20/2003	EXAMINER	
COOK, ALEX, MCFARRON, MANZO, CUMMINGS & MEHLER LTD SUITE 2850 200 WEST ADAMS STREET CHICAGO, IL 60606			COE, SUSAN D	
			ART UNIT	PAPER NUMBER
			1654	

DATE MAILED: 11/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/842,511

Applicant(s)

POWELL ET AL.

Examiner

Susan Coe

Art Unit

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 38-66 is/are pending in the application.
- 4a) Of the above claim(s) 41-50 and 58-63 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 38-40, 51-57 and 64-66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

1. The amendment filed August 25, 2003, has been received and entered. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior Office action.
2. Claims 64-66 have been added.
3. Claims 38-66 are pending.

Election/Restrictions

4. In Paper No. 13, dated May 5, 2003, applicant elected with traverse of Group 1, claims 38-45 and 51-58, a flavored composition for species A, 1,1,1,2,3,3,3-heptafluoropropane for species B, and a C₂₋₄ alkane for species C. As stated in the previous Office action, in regards to the examination of the elected species, the use of the elected species, a C₂₋₄ alkane, as the cosolvent in combination with 1,1,1,2,3,3,3-heptafluoropropane is considered allowable. Additionally examined species for C, a C₂₋₆ hydrocarbon, a dialky ether, dimethyl ether, and butane are all considered to be allowable in combination with 1,1,1,2,3,3,3-heptafluoropropane. Additional species are selected for examination. Examination was conducted with a flavored composition for species A, hydrofluoropropanes for species B and C₂₋₄ alkanes for species C.
5. This application contains claims 41-50 and 58-63 drawn to an invention nonelected with traverse in Paper No. 13. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.
6. Claims 38-40, 51-57, and 64-66 are examined on the merits.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 38-40, 51-57 and 64-66 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 38 is rendered indefinite by the use of parentheses in “(hydro) fluorocarbon.” The use of parentheses is considered indefinite because it cannot be determined when the enclosed limitation is or is not to be included in the claim.

Claim Rejections - 35 USC § 102

7. Claims 38, 39, 51-57 and 64 are rejected under 35 U.S.C. 102(b) as being anticipated by GB 2 225 205 A for the reasons set forth in the previous Office action.

All of applicant’s arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the reference does not teach extracting a flavored compound or a natural compound using a hydrofluorocarbon with a non - hydrofluorocarbon cosolvent. Applicant argues that the reference lists numerous solvents in Table 1 but does not have an explicit disclosure combining a hydrofluorocarbon with a non-hydrofluorocarbon. Applicant argues that the list in Table 1 is “speculative” and would not lead a person of ordinary skill in the art to combine a hydrofluorocarbon with a non-hydrofluorocarbon. However, the reference does clearly disclose using a hydrofluorocarbon with a non-hydrofluorocarbon to extract oils from the foods. Claim 6 specifically states that the

alkanes, chloroalkanes, fluoroalkanes, chlorofluoroalkanes, and ethers can be used in combination. The appropriate alkanes, chloroalkanes, fluoroalkanes, chlorofluoroalkanes, and ethers are listed in Table 1. Therefore, the combination of the solvents listed in Table 1 is clearly an embodiment taught by the reference.

Applicant also argues that the oils extracted in the reference are not a flavored or a natural product; however, oils are considered to be a natural product that would have flavor. Thus, applicant's claims are properly anticipated by the reference.

8. Claims 38-40, 51, 56, 57, and 64 are rejected under 35 U.S.C. 102(e) as being anticipated by US Pat. No. 5,481,058.

Applicant's claims are drawn to extracting a flavored composition from a raw material using 1,1,1,2,3,3,3-heptafluoropropane and a cosolvent that is not a hydrofluorocarbon.

US '058 teaches using 1,1,1,2,3,3,3-heptafluoropropane and carbon dioxide to extract impurities (see claims 1 and 11). The extracted impurities include sugars, proteins, solvents, and antioxidants (see column 4, lines 35-39). These impurities are considered to be natural products that would have flavors.

9. No claims are allowed. However, claims 65 and 66 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

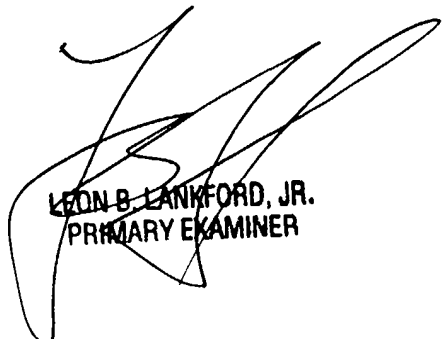
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (703) 306-5823. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached on (703) 306-3220. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Susan Coe, Examiner
November 14, 2003



LEON B. LANKFORD, JR.
PRIMARY EXAMINER